

**Order 97-11-3**

**Served: November 7, 1997**



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 4<sup>th</sup> day of November, 1997

Complaint of

**UNITED AIR LINES, INC.**

**against**

**THE GOVERNMENT OF THE  
RUSSIAN FEDERATION**

under 49 U.S.C. section 41310

**Docket OST-97-2888**

**ORDER EXTENDING DEADLINE**

On September 9, 1997, United Air Lines, Inc., filed a complaint under 49 U.S.C. section 41310 against the Government of The Russian Federation (Russia). United alleges that Russia is in violation of the 1993 Air Transport Agreement between the United States and the Russian Federation because Russia forced United to terminate its U.S.-Moscow code-sharing services via Frankfurt with Lufthansa German Airlines (Lufthansa), and that such action places unjustifiable and unreasonable restrictions on United, requiring retaliatory action by the Department.

In support of its complaint, United states that the 1993 Air Transport Agreement between the United States and the Russian Federation in Annex I, Section VI authorizes U.S. carriers to serve Russia under third-country code-sharing arrangements, and that consistent with those provisions, in July 1994 Russia approved United's code-share operations with Lufthansa for services between the United States and Moscow via Frankfurt.<sup>1</sup> United states, however, that in March 1995, Russia refused to approve United's U.S.-Moscow Summer 1995 code-share schedule and ordered United to terminate its code-sharing services with Lufthansa on the basis

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<sup>1</sup> All of the Annexes in the agreement expired by their terms on May 31, 1997, but both governments have continued to authorize each other's carriers to provide services consistent with their terms, pending conclusion of an agreement to renew or amend the Annexes.

that such operations were not permitted under a recent agreement between Germany and Russia. United further states that Russia has continued to prohibit United's code-share services despite objections by the United States in April 1995 U.S.-Russia aviation negotiations, and despite German Government statements that the Germany-Russia agreement does not address third-country code sharing and that Germany would allow Russian carriers to code share with U.S. carriers on U.S.-Russia services via Germany on the basis of reciprocity with Russia.<sup>2</sup> Finally, United notes that Russia has permitted similar code-share operations between Northwest Airlines and KLM and between Delta Air Lines and Swissair, and argues that the Department should not permit Russia to decide which code-share services can be operated.

Based on the above, United urges the Department to impose proportional sanctions against the Russian carrier Aeroflot, specifically, that Aeroflot be prohibited from operating its nine weekly flights between Russia and Chicago, San Francisco, and Washington/Dulles "until such time as Russia remedies its violations of the agreement."<sup>3</sup> United states that its flights to Frankfurt from each of these cities would connect to Lufthansa's Moscow flights and would provide competition to Aeroflot's services at these U.S. hubs. It also states that at the time it was forced to discontinue its code-share services, United and Lufthansa operated a total of 14 weekly code-share flights to Russia from Frankfurt.<sup>4</sup>

By Order 97-9-19, we invited all interested parties to file answers and replies to United's complaint. Answers were filed by Aeroflot Russian International Airlines, Delta Air Lines, Inc., and Alaska Airlines, Inc.<sup>5</sup> In addition, a joint answer was filed by The City of Chicago, The City and County of San Francisco, and the Metropolitan Washington Airports Authority. Continental Airlines, Inc., and United each filed a consolidated reply, and United filed a response to Continental's reply.<sup>6</sup>

Section 41310 provides that we shall approve, deny, dismiss, or set a complaint for hearing, or institute other procedures proposing remedial action, within 60 days after receipt of the complaint. We may extend the period for taking action up to 90 days from the date of the complaint if we conclude that it is likely that the complaint can be resolved satisfactorily through negotiations. We may further extend the action deadline up to 180 days from receipt of the complaint, in 30-day increments, if we find that intergovernmental negotiations have progressed to a point that a satisfactory resolution of the complaint appears imminent.

We are very concerned over the issues raised in United's complaint. Indeed, even before the filing of the complaint we had made clear our view that these important issues should be

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<sup>2</sup> July 1, 1997, letter to United from the German Ministry of Transport.

<sup>3</sup> Complaint at 12.

<sup>4</sup> Id.

<sup>5</sup> Alaska accompanied its answer with a motion for leave to file late. We will grant the motion.

<sup>6</sup> United accompanied its response with a motion for leave to file an otherwise unauthorized document. We will grant the motion.

addressed directly with the Russian Government through diplomatic channels.<sup>7</sup> Importantly, in this regard, we have bilateral negotiations scheduled for November 12-14, 1997, in Moscow. We fully intend to address the issue of third-country code-sharing, including the specific issues raised in United's complaint, during those negotiations. Against this background, we believe the public interest is best served by extending the deadline for action on United's complaint for 30 days to provide additional time to reach a negotiated resolution of this matter.

**ACCORDINGLY,**

1. We extend through December 8, 1997, the deadline for taking action on the complaint of United Air Lines, Inc., in Docket OST-97-2888;
2. We grant the motion of Alaska Airlines, Inc., for leave to file a late answer in Docket OST-97-2888;
3. We grant the motion of United Air Lines, Inc., for leave to file an otherwise unauthorized response in Docket OST-97-2888; and
4. We will serve this order on Alaska Airlines, Inc.; American Airlines, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation; Northwest Airlines, Inc.; Polar Air Cargo, Inc.; United Air Lines, Inc.; Aeroflot Russian International Airlines; Lufthansa German Airlines; Transaero Airlines, Volga-Dnepr J.S. Cargo Airlines; the United States Department of State (Office of Aviation Negotiations); the Assistant U.S. Trade Representative; Office of the United States Trade Representative; the U.S. Department of Commerce (Office of Service Industries); the Ambassador of the Russian Federation in Washington, D.C.; and the Air Transport Association.

By:

**CHARLES A. HUNNICUTT**  
**Assistant Secretary for Aviation**  
**and International Affairs**

(SEAL)

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<sup>7</sup> See e.g., letter to Aeroflot dated May 15, 1997, from the Director, Office of International Aviation, Department of Transportation, copy on file in the Office of International Aviation (X-45).